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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,499	06/19/2001	Simon Qin	83336.0001	4469
26021	7590	10/19/2004	EXAMINER	
HOGAN & HARTSON L.L.P. 500 S. GRAND AVENUE SUITE 1900 LOS ANGELES, CA 90071-2611			BONZO, BRYCE P	
			ART UNIT	PAPER NUMBER
			2114	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/885,499

Applicant(s)

QIN ET AL.

Examiner

Bryce P Bonzo

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18 is/are allowed.
- 6) ☒ Claim(s) 9-13 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL OFFICIAL ACTION

Status of the Claims

Claims 1-8 are allowed.

Claims 9-13 and 21-27 are rejected under 35 USC §102.

Claim 14-20 are cancelled.

Rejections under 35 USC §102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-13 and 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Uemura (United States Patent No. 5,720,026).

As per claim 9, Uemura discloses:

A backup method, suitable for a computer system including a temporary type data and a perpetual type data stored therein, said temporary type data and said perpetual type data being capable of changed respectively, said backup method comprising the steps of:

selecting a first process mode in accordance with said temporary type data (column 5, lines 21-23); and

backing up valid data being changed within said temporary type data according to said first process mode (column 5, lines 21-33) prior to said temporary type data being changed (column 5, lines 61 through column 6, line 10: The daily incrementally backed up transactions disclosed in this portion of Uemura are interpreted by the Examiner as the "temporary type data" as it is transient in nature, and is backed up at night prior to being changed the next day where it is again incrementally backed up in a different incremental back-up).

As per claim 10, Uemura discloses:

further comprising the step of storing said temporary type data in a first back up space of said computer system, wherein said first backup space is variable and adjustable (column 6, lines 61 through column 7, line 17 describe that as incremental back up is separate and distinct and thus as more are made the size allocated to them must be variable as they do not exist prior to be created).

As per claim 11, Uemura discloses:

wherein a second process mode is selected in accordance with said perpetual type data, all valid data within said perpetual type data being backed up in accordance with second process (column 6, lines 61 through column 7, lines 17: on the weekend backup all data is considered valid perpetual data).

As per claim 12, Uemura discloses:

further comprising the step of storing said perpetual type data in a second backup space of said computer system, said second backup space being variable and adjustable (column 6, lines 61 through column 7, line 17)

As per claim 13, Uemura discloses:

wherein said temporary type data is stored in a first backup space of said computer system, said computer perpetual type data is stored in a second back up space of said computer said first backup space and said second backup space are variable and adjustable and said first and second back up space together constitute the a total backup space (column 6, lines 61 through column 7, line 17: the incremental daily backs are stored in one location whereas the full back ups to which the incremental are applied are stored elsewhere as two pieces of data can not be stored in the same address location; both backup spaces are variable as the back which they backup are no where disclosed as being a fixed size, and thus require more or less space as more or less data is backed up; as there are only disclosed full and incremental backups these two types constitute the whole of backup space).

As per claim 21, Uemura discloses:

wherein said backed-up file may contain said valid data and identification information to identify said valid data (column 10, lines 14-17: these lines show the

checksum data and thus the backed up data can reasonably be presumed valid unless there is a condition involving a bad checksum).

As per claim 22, Uemura discloses:

a first program code for determining a first mode and a second predetermined mode (column 4, lines 60-64); and second program code for processing a first type data and a second type data corresponding to said first predetermined mode and second predetermined mode (column 4, lines 60-64), wherein said second program code backs up valid data being changed within said first type data while said first predetermined mode is determined (column 8, lines 43 through column 10, line 23), and said second program code backs up all valid data within second type data while said second predetermined mode is determined (column 6, lines 61 through column 8, line 41).

As per claim 23, Uemura discloses:

wherein said first type data includes temporary data (this is the incremental data) and said second type data includes perpetual data needed to be preserved over a long period of time (this is the full back up).

As per claim 24, Uemura discloses:

wherein said first type data is stored into a first data storage space of said computer system (as only one piece of data can be stored at a location, the first data must be stored at a place which is not the location of the second data).and said second

type data is stored into a second data storage space of said computer system (the full back up data is placed into the full back up space which is clearly different than the incremental space).

As per claim 25, Uemura discloses:

wherein the size of first data storage space is variable (both backup spaces are variable as the back which they backup are no where disclosed as being a fixed size, and thus require more or less space as more or less data is backed up; as there are only disclosed full and incremental backups these two types constitute the whole of backup space).

As per claim 26, Uemura discloses:

wherein the size of said second data storage is variable (both backup spaces are variable as the back which they backup are no where disclosed as being a fixed size, and thus require more or less space as more or less data is backed up; as there are only disclosed full and incremental backups these two types constitute the whole of backup space).

As per claim 27, Uemura discloses:

wherein said first type data is stored into a first variable data storage space in said computer system, and said second type data is stored into a second variable data storage space in said computer, said first variable data storage space and second

variable data storage space being adjustable in size and proportion (both backup spaces are variable as the back which they backup are no where disclosed as being a fixed size, and thus require more or less space as more or less data is backed up; as there are only disclosed full and incremental backups these two types constitute the whole of backup space).

Allowable Matter

Claims 1-8 are allowed.

Response to Applicant's Arguments

Applicant has provided extensive arguments relating to the newly added limitations data of being backed up prior to being changed. Applicant should note, claims 1-8 are now allowed.

Applicant has argued that Uemura is unable to restore a disk to original data, as the original data has been destroyed. The Examiner has found no basis for this argument in Uemura. Each incremental backup will provide the data save or recovery point in Uemura. If an error occurs in Uemura on saving Thursday night's back up incremental back, up Wednesday night's back is still in place, as are checksums for data error correction. Further Uemura does not destroy the data being backed up, it remains in the system. Further, Applicant seems to ignore that Uemura saves different incremental back ups, and then on a week end of holiday takes a complete back up. Up until the second full back, which will eliminate the incremental backups (if successful)

Uemura appears to operate in the same manner. Uemura allows a roll back of days for which an incremental is present. Furthermore, Applicant argues about error handling features, not present in the claims. Much of pages 9 and 10 of Applicant's Amendment deal with differences in error handling features which not claimed in the present claims.

Final Disposition

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryce P Bonzo whose telephone number is (703) 305-4834 or upon moving to the new facilities in Alexandria (571) 272-3655. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (703) 305-9713 or upon moving to the new facilities in Alexandria (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bryce Bonzo